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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/020,779	12/14/2001	Scott R. Swix	01377	9532

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One AT&T Way

Bedminster, NJ 07921

EXAMINER

VAN BRAMER, JOHN W

ART UNIT

PAPER NUMBER

3622

MAIL DATE

DELIVERY MODE

06/28/2010

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/020,779	Applicant(s) SWIX ET AL.	
	Examiner JOHN VAN BRAMER	Art Unit 3622	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 April 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 3-6, 8 and 17-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 3-6, 8, and 17-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>030310, 110708</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on November 7, 2008 has been entered.

Response to Amendment

2. The amendment filed on April 16, 2010 cancelled claim 2. Amendments were made to claims 1, 3, 5, and 17-20. No new claims were added. Thus, the currently pending claims addressed in this Office Action are 1, 3-6, 8, and 17-20.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. Claims 1, 3-6, 8, and 17-20 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application

Art Unit: 3622

was filed, had possession of the claimed invention. Independent claims 1 and 17 have been amended to incorporate storing a webpage in memory, sending the webpage to the advertiser, and receiving the webpage from an advertiser. The examiner can find no support for said storing, sending and receiving of web pages in the applicants specification. The applicant does have an interactive server that appears to be able to communicate between the advertiser and the advertisement management method and system, but there is no indication that said communication is performed via storing a webpage in memory, sending the webpage to the advertiser and receiving the webpage from the advertiser. The only recitation of a webpage in the applicants disclosure appears to be in regards to the type of media that the chosen advertisement is displayed upon.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1-6, 8, and 17-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hendricks et al (U.S. Patent Number: 6,463,585). In view of Reuning et al. (PGPUB: US 2002/0087573)

Claims 1 and 17: Hendricks discloses an advertisement management method and system, comprising:

- a. Receiving programming content delivered as a scheduled lineup having an advertisement inserted into a future advertisement time slot, the programming content scheduled to be broadcast in the future from a network provider's server to a subscriber's equipment (Fig. 13, and Col 10, line 61 through Col 11, line 25)
- b. Notifying the advertisers of a future advertisement time slot in the scheduled lineup. (Fig. 13, Col 10, line 61 through Col 11, line 25; Col 28, lines 32-45; Col 30, line 65 through Col 31, line 6; and Col 35, line 52 through Col 36, line 3)
- c. Receiving advertisements from the advertisers and storing the advertisements in the memory of the server. (Fig. 13, Col 10, line 61 through Col 11, line 25; Col 28, lines 32-45; Col 30, line 65 through Col 31, line 6; and Col 35, line 52 through Col 36, line 3)
- d. Categorizing, the advertisements by the server as overrideable or non-overrideable, the overrideable categorization allowing an advertisement to be replaced with a different advertisement, and the non-overrideable categorization not allowing replacement of the advertisement and allowing the advertisement to be delivered as scheduled. (Fig 13; Col 11, line 55 through Col 12, line 30; Col 33, lines 18-42; and Col 34, lines 22-38)

- e. Receiving, an advertiser's request to replace the advertisement with a different advertisement and an indication of financial premium for replacing the advertisement with the different advertisement. (Fig 13; Col 11, line 55 through Col 12, line 30; Col 33, lines 18-42; Col 34, lines 22-38 and Col 71, lines 11-29))
- f. Determining whether the advertisement is categorized as overridable. (Fig 29; Col 33, lines 18-42; and Col 67, lines 45-52)
- g. Determining whether the advertisement and the different advertisement are equal in time length. (Fig 29; Col 33, lines 18-42; and Col 67, lines 45-52)
- h. Determining, that the different advertisement has been recorded in a compatible format with the scheduled broadcast. (Fig 29; Col 33, lines 18-42; Col 67, lines 45-52, Col 48, lines 54-63; and Col 51, lines 49-64)
- i. Searching, to determine a time of broadcast of a previous advertisement relating to a same type of product as the different advertisement (Col 33, lines 18-42, Col 34, lines 22-38; Col 37, line 13 through Col 39, line 65; Col 67, lines 53-62; and Col 70, line 29 through Col 71, line 49)
- j. When the advertisement is categorized as overrideable, and when the advertisement and the different advertisement are equal in time length, then replacing the advertisement with the different advertisement, such that the different advertisement is inserted into the programming content.

(Col 33, lines 18-42, Col 34, lines 22-38; Col 37, line 13 through Col 39, line 65; Col 67, lines 53-62; and Col 70, line 29 through Col 71, line 49).

- h. Broadcasting the programming content to the subscriber's equipment, the broadcasted programming content having the advertisement replaced with the different advertisement. (Col 4, lines 25-67; and Col 34, lines 22-38)

While Hendricks does not specifically state that advertisements for the same type of product are not broadcast within 2 hours of each other, he does disclose tracking the advertisements that are watched and adjusting the weighting of the advertisement or advertisement group based upon this factor (Col 33, lines 18-42, Col 34, lines 22-38; Col 37, line 13 through Col 39, line 65; Col 67, lines 53-62; and Col 70, line 29 through Col 71, line 49). Therefore, it would be obvious to one of ordinary skill in the art at the time the invention was made to utilize a time frame associated with this weighting factor. One of ordinary skill in the art at the time the invention was made would understand that programs typically run in predictable lengths of time such as 30 minutes, 60 minutes and two hours. The rationale for including a two hour time frame for the weighting factor is that there are a limited number of predictable program lengths from which commercial insertion occurs for a single program within a given program schedule.

While Hendricks discloses that the advertiser and the operation center communicate with one another to determine which advertisements an advertiser desires to submit for future insertion into a scheduled programming lineup, it is not specifically disclosed that the operation center sends a webpage to the

advertiser and that the operation center receives a webpage from and advertiser. However the analogous art of Reuning discloses in Paragraphs [0485], [0509]-[0510], and [0518]-[0521] that it is known for an advertiser to receive a webpage which allows it to submit advertisements to another entity and that the other entity receives web pages indicating the advertisements and the targeting criteria the advertiser desires to utilize. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made for the communication between the advertiser and the operation center of Hendricks to occur via the sending and receiving of web pages. The rational for communicating in this manner is that there are a limited number of predictable method in which the advertiser and the operation center can communicate and the sending and receiving of web pages is one such predictable communication method.

Claims 18: Hendricks and Reuning discloses the system of claims 17, wherein the interactive server precategories the advertisement time slot as overrideable or non-overrideable. (Fig 13; Col 11, line 55 through Col 12, line 30; Col 33, lines 18-42; and Col 34, lines 22-38)

Claims 3 and 19: Hendricks and Reuning discloses the method and system of claims 1, and 17 respectively, further comprising pricing the overrideable advertisement time slot at a lower cost than the non-overrideable advertisement time

Art Unit: 3622

slot. (Col 11, line 55 through Col 12, line 9; Col 34, lines 22-44; and Col 70, lines 31 through Col 71, line 49)

Claims 4 and 20: Hendricks and Reuning discloses the method and system of claims 1 and 17 respectively, further comprising providing data regarding viewing habits that distinguishes more-valuable viewers from less-valuable viewers. (Fig 29; and Col 70, lines 31 through Col 71, line 49)

Claim 5: Hendricks and Reuning discloses the method of claims 4 and 13 respectively, further comprising matching advertisements with the more-valuable viewers and with the less-valuable viewers. (Fig 29; and Col 70, lines 31 through Col 71, line 49)

Claim 6: Hendricks and Reuning discloses the method of claims 1, further comprising wherein at least one of: broadcasting the programming content as a television broadcast, broadcasting the programming content as a radio broadcast, and broadcasting the programming content over a network. (Col 4, lines 25-67)

Claim 8: Hendricks and Reuning discloses the method of claim 1, further comprising creating a log of events viewed by potential customers. (Col 45, lines 20-46; and Col 47, lines 46-60)

Conclusion

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to JOHN VAN BRAMER whose telephone number is (571)272-8198. The examiner can normally be reached on 6am - 4pm Monday through Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eric Stamber can be reached on (571) 272-6724. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Application/Control Number: 10/020,779
Art Unit: 3622

Page 10

/John Van Bramer/
John Van Bramer
Primary Examiner, Art Unit 3622